# SUPREME COURT OF THE UNITED STATES.

No. 87.—October Term, 1920.

United States of America, Appellant, vs. Diamond Coal and Coke Company. } Appeal from the United States Circuit Court of Appeals for the Eighth Circuit.

[March 7, 1921.]

Mr. Chief Justice White delivered the opinion of the Court.

This suit begun by the United States against the Diamond Coal & Coke Co. in October, 1917, had a threefold object: (1) To cancel 18 patents granted to that number of persons, at dates ranging from 14 to 21 years prior to the commencement of the suit, and covering 2283 acres of coal land situated in the Evanston Land District, State of Wyoming; (2) to cancel deeds of conveyance to the corporation made by the entrymen who had purchased from the United States the land which the patents embraced; (3) to recover the value of coal which it was alleged had been taken by mining operations of the corporation from the land in question during the period stated.

It suffices from the view we take of the matters requiring consideration to briefly resume the averments of the bill. It was alleged that in the year 1894 the defendant corporation had formed a conspiracy to defraud the United States of the land covered by the patents by procuring the purchase of said land from the United States by persons acting ostensibly for themselves but really as the representatives of the corporation and for its sole account and benefit. In furtherance of the conspiracy thus formed, it was alleged that 18 persons described as entrymen, at the suggestion and in the pay of the corporation, made application at the proper land office of the United States to purchase in their own names the land covered by the patents, the land so applied for having been designated by the corporation and the entries being exclusively intended for its benefit. It was

charged that these entrymen falsely swore, for the purposes of their applications to purchase, that the applications were made for their own benefit, when in fact they were solely made for the benefit of the corporation; that the entrymen additionally falsely swore that they were in possession of the land, had developed coal mines on it, and were engaged in working the same, when in truth the lands had never been in the possession of the applicants, who had expended no money and had done no work thereon, since the lands were, prior to and at the time of the applications, in the possession of the corporation through its officers or some persons or agents acting for it and for its benefit.

It was further alleged that shortly after the entries were made, in furtherance of the fraudulent purpose and upon the false allegations and affidavits above stated and before patent issued, the entrymen conveyed the land applied for by warranty deed to the corporation, although there was no allegation concerning the registry or non-registry of the deeds of conveyance thus made. The bill in addition charged that for the purpose of securing the right which was contemplated for the benefit of the corporation, further false affidavits as to the exclusive interest of the entrymen were made and that all the money paid by way of price for the land or for expenses or otherwise was furnished by the corporation for its own account. It was alleged that the corporation for many years before the transactions thus stated had engaged in the mining, production, and sale of coal in the State and district in which the land covered by the entries was situated; that its operations had been principally carried on in the vicinity of such lands, and that the lands involved in the suit had been mined for coal and large quantities of coal had been and were still being removed therefrom to the irreparable injury of the United States; the value of the coal thus removed being the subjectmatter of the claim in that respect to which we have at the outset referred.

There were general averments that the previously alleged acts concerning the making of the entries, which were alike in all, were done not only for the purpose of defrauding the United States and enriching the corporation, but in order to conceal the wrong which was being accomplished, and that the acts of concealment were of such a character as to deceive the officers of the United States and to lead them to believe that the entries were what they

purported to be, that is, purchases by the entrymen, and to exclude, therefore, not only the knowledge that they were for the account of the corporation, but also to exclude all basis for affording any reasonable ground to put the United States upon inquiry as to the real situation. Additionally, it was averred that, so completely did the fraud which was committed and its concealment accomplish the purposes thus intended, that the officers of the United States had no knowledge whatever of the fraudulent title acquired by the corporation and no reason to believe in its existence until a short time before the bringing of the suit when, by report of a special agent of the Land Office, knowledge of the true situation was in part conveyed, leading up to a further investigation by the Department of Justice, consequent upon which the suit was commenced.

It was moved to dismiss on four grounds: (1) That the bill stated no cause of action; (2) that it was barred by the limitation of the Act of March 3, 1891, chap. 559, 26 Stat. 1093, as the six-year period fixed by that Act had elapsed; (3) because the facts as to fraud and concealment alleged in the bill were not of such a character as to suspend the operation of the statute, and (4) because those facts were of such a nature as necessarily to impute the knowledge of the fraud complained of, or if not, to make it clear that the failure to seek relief within the statutory time was the result of inexcusable laches. The court, not questioning that in an adequate case the fraud and the concealment thereof would suspend the operation of the statute until the discovery of the fraud (*Exploration Co.* v. *United States*, 247 U. S. 435, 445), based its conclusion upon the qualifications and limitations inhering in that rule, as stated in the *Exploration* case and as previously expounded in *Bailey* v. *Glover*, 21 Wall. 342. Concluding that the averments of the bill were insufficient to establish that the failure to discover within the statutory time was not solely attributable to laches, and finding the bar of the statute under these circumstances absolute, the court applied the statute and dismissed the bill. The United States having elected not to avail of leave to amend within a period of 90 days allowed by the court of its own motion but to stand on its bill, a final decree was entered dismissing the bill, and the case was taken to the court below.

That court, while considering the subject in the light of the burden cast upon the United States resulting from the fact that

the time fixed by the statute had run before the suit was brought, and the technical sufficiency of the bill viewed merely from that aspect, proceeded to consider the averments of the bill comprehensively. As a result it concluded (a) that the allegations of the bill did not meet the requirements as to the exertion of due diligence to discover the fraud which they charged had been committed, and (2) that the bar of the statute was applicable because the allegations of the bill stated the existence of facts and circumstances from which knowledge of the fraud was necessarily to be imputed, or from which such inferences were plainly deducible as would have led to discovery if diligence had been exerted; in other words, that there was either knowledge of the fraud within the statutory period, or such laches resulting from failure to make inquiry as to take the case out of the equitable principle by which the positive bar of the statute could be avoided.

Before testing the accuracy of the deductions from the averred facts upon which these conclusions are necessarily based, we dispose of a legal contention of the United States, that in any event the propositions were wrongfully applied because under the statute laches in discovering the fraud could not be imputed to the United States. As the statute in express terms deals with the rights of the United States and bars them by the limitation which it prescribes, and as that bar would be effective unless the equitable principle arising from the fraud and its discovery be applied, it must follow, since the doctrine of laches is an inherent ingredient of the equitable principle in question, that the proposition is wholly without merit because, on the one hand, it seeks to avoid the bar of the statute by invoking the equitable principle suspending its operation, and, on the other, rejects the fundamental principle upon which the equitable doctrine invoked can alone rest.

Coming, then to consider the allegations of the bill for the purpose of testing the conclusions based upon them by the court below, as just stated, we are of opinion that such conclusions cannot be sustained without drawing unauthorized inferences from the facts alleged and thus deciding the case by indulging in mere conjecture. Without going into detail, we briefly advert to the inferences from two subjects dealt with by the court below which illustrate the necessity for the conclusion just stated. In the first place, let it be conceded *arguendo* that the conveyances from the

entrymen to the corporation as alleged, following almost immediately the initiation of the right to purchase and preceding the patents, the uniformity of the method employed, and the surrounding circumstances, would all, if known, have constituted badges of fraud of such a character as to produce the result which the court below based upon them. But the result thus stated depends upon the existence of knowledge of such facts or of knowledge of other facts from which they were reasonably deducible,—a situation which does not here exist, as the averments of the bill as to concealment exclude that conclusion. True it is, that in dealing with the question of the technical sufficiency of the pleading the court below directed attention to the fact that it contained no allegation that the conveyances made by the entrymen had not been seasonably recorded; but that in no way justifies the inference that they had been recorded and therefore gave notice of the fraud, even if it be conceded, for the sake of the argument, that such recording was adequate to give such notice,—a question which we do not now decide.

So also, let it be conceded, as held by the court below, that the allegations of the bill as to the possession of the land by the corporation at the time of the purchase by the entrymen and subsequent to their conveyances; of the propinquity of the land to the field of operations of the corporation; of its exploitation by the corporation for the purpose of taking coal therefrom, all in and of themselves, if open and public so as to be known, constituted such indications of fraud as to give notice to the United States, or at least to put it upon inquiry. But again, that concession is here irrelevant since the averments of concealment and other allegations in the bill are susceptible of the construction that the possession of the corporation was clandestine and that its operations as to the property were of the same character because not conducted in its own name but by persons interposed with the very object of concealment.

Viewing the case in the light of these considerations, as well as of others to the same effect to which we do not stop to refer, we are of opinion that error was committed in disposing of the bill upon the motion to dismiss, and that the ends of justice require that it should be only finally disposed of after hearing and proof, thus excluding the danger of wrong to result from a final determination of the cause upon mere inferences without proof.

It follows that the decree of the court below must be and it is reversed and the case remanded to the District Court with directions to set aside its decree of dismissal and to overrule the motion to dismiss and for further proceedings in conformity with this opinion.

*Reversed and remanded.*

A true copy.

Test:

*Clerk Supreme Court, U. S.*